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**Response to Comments
On Proposed Amendments To**

**310 CMR 50.00
“Toxics Use Reduction”**

**Regulatory Authority:
M.G.L. Chapter 21I, §§ 3, 10, 11, and 12**

December 2007

SUMMARY

The Massachusetts Department of Environmental Protection (MassDEP) proposed regulatory revisions to 310 CMR 50.00 (Toxics Use Reduction) to implement statutory amendments that affect planning requirements under the Toxics Use Reduction Act (TURA, MGL c. 21I), including new options for resource conservation (RC) plans and environmental management systems (EMSs) available for the 2008 planning year.

MassDEP held three public hearings and solicited oral and written testimony on the proposed regulations in accordance with Massachusetts General Laws (MGL) Chapter 30A. MassDEP published notice of the public hearings and comment period in the Springfield Republican and the Boston Globe, and notified interested parties via electronic mail of the public hearings and comment period. Public hearings were held on the following dates and public comments were accepted until August 27, 2007:

Hearings Held:	August 6, 2007 in Worcester, Massachusetts
	August 8, 2007 in Springfield, Massachusetts
	August 15, 2007 in Boston, Massachusetts

This document summarizes and responds to comments that were received on the draft regulations. MassDEP appreciates the input from those who provided comments. Those who provided written comments are listed below:

- Timothy J. Greiner, Pure Strategies, Inc.
- Toxic Use Reduction Planner Association (TURPA)
- Liz Harriman, Toxics Use Reduction Institute
- Armin Steiner, Massachusetts Chemistry & Technology Alliance

COMMENTS AND RESPONSES

1. Comment: MassDEP should add climate protection as an asset that can be the focus of a Resource Conservation Plan. Assessing greenhouse gas (GHG) emissions and minimizing these emissions would be a natural part of a resource conservation plan. Climate protection goes beyond just energy use since it includes refrigerant releases, employee business travel, product transportation, and (depending on how you draw your boundaries) supply chain emissions and emissions from product use and disposal.

Response: According to TURA, resource conservation is any action that decreases the use or consumption of a natural asset, such as energy, water, or materials. MassDEP believes that reducing the use of these assets are key ways of achieving greenhouse gas (GHG) reductions and achieving climate benefits. Beyond energy use, for example, reducing water use can result in less energy (and associated GHG emissions) needed for facility processes. Reducing materials use also will reduce GHG emissions when viewed from a life-cycle perspective. MassDEP believes that resource conservation plans should be developed with climate protection in view, but currently views climate protection as an organizing principle or goal rather than a physical asset in itself.

Resource conservation plans are flexible, and a company may include refrigerant releases, business travel, and other broader GHG emission reduction initiatives in its resource conservation plan, provided the plan addresses at least one of the listed core assets. Ideally, a climate-focused resource conservation plan would address energy, water, and materials; however, a facility can choose to focus its resource conservation plan on just one asset.

While MassDEP has not included climate protection as a specific asset in the final regulations, it will highlight climate protection in the resource conservation guidance it is developing and will work with program stakeholders to evaluate how climate protection can best be addressed by the regulations.

2. Comment: MassDEP should develop a form for the Environmental Management System (EMS) Progress Report and the Resource Conservation Plan Summary

Response: MassDEP agrees with this comment and has developed EMS Progress Report and Resource Conservation Plan Summary Forms. These forms will be made available as part of the eDEP filing system.

3. Comment: The required TURP courses for resource conservation planning certification should be available in each region and held before December 31, 2007 to support planning that needs to begin by January 2008.

Response: The Toxics Use Reduction Institute (TURI), in collaboration with MassDEP and the Office of Technical Assistance (OTA), is planning several training sessions to provide credit opportunities for planners to be certified in resource conservation planning, including a six-credit training (to be held in December 2007 and in early January 2008) in applying toxics use reduction planning methods to resource conservation planning [to meet the training requirements

of 310 CMR 50.63(1)(a)]. TURI also plans to hold a second day (six credits) of resource conservation planning training later in January 2008. In addition, OTA plans to hold several workshops on more technical aspects of resource conservation planning. It should be noted that the regulations do not require that resource conservation training be obtained from a TURA agency and that other organizations or professional associations may develop their own training. The TURA program agencies are willing to support other organizations in providing additional training if there is interest. The regulations [310 CMR 50.63(3)] also allow planners to apply for credits for qualifying resource conservation training they may have taken back to July 1, 2006.

4. Comment: The language in 310 CMR 50.63(2) is confusing regarding whether resource conservation planning credits are needed for planners to certify resource conservation plans for TURA chemicals used below threshold, non-listed chemical substances, or toxics in articles. This training should not be required for planners to certify a plan for TURA chemicals used below threshold or for non-listed chemical substances. However, resource conservation planning credits should be required for planners to certify a plan for toxics in articles. This language would be clearer if it stated that planners certifying plans for the natural assets listed in 50.92(2)(c and d) would not need to meet the continuing education requirement specified in 50.63(1).

Response: MassDEP agrees with this comment and has made this change. In addition, MassDEP made a change to 50.92 to clarify that resource conservation planning may be done for a TURA-listed chemical that is not reportable for any reason, including the exemptions cited in the definition of “toxic or hazardous substance”, in addition to being used below threshold and being present in an article.

5. Comment: In 310 CMR 50.81(3) the citation to 310 CMR 80.00 should be corrected.

Response: MassDEP has corrected this citation to read 310 CMR 50.80.

6. Comment: In 310 CMR 50.81(3), MassDEP should add the word “significant” in the following sentence before “non-compliance”: “If the Department determines that an environmental management system developed pursuant to 310 CMR 50.80 has not proven to be effective as evidenced by significant noncompliance with any of the Departments regulations or permit conditions... This language as written could provide a disincentive to use the EMS option as an alternative to TUR planning, as a minor violation could trigger the actions specified in this section.

Response: MassDEP has changed “noncompliance” to “significant noncompliance” to clarify that it believes that significant noncompliance would be indicative of a potential deficiency in a facility’s EMS. MassDEP recognizes that minor issues of noncompliance do not necessarily indicate that an EMS is not functioning adequately, but believes that significant noncompliance should be prevented (or at least identified and corrected) by a well-functioning EMS. Where this is not the case, MassDEP believes the EMS should be evaluated and improved if warranted.

7. Comment: MassDEP should exempt companies with established third-party audited EMS programs such as ISO 14001 from the EMS Progress Report (310 CMR 50.83) and Certification

of the EMS Progress Report (310 CMR 50.84). These companies instead should be allowed to submit their third-party EMS audit reports to MassDEP as the EMS progress report. It is unfair to require Massachusetts companies that use and pay for accredited EMS programs to hire and pay for an additional MassDEP-approved auditor for the certification of a Progress Report. This would become another regulatory requirement that makes doing business in Massachusetts more costly than elsewhere.

Response: The TURA statute establishes specific requirements for facilities that choose to implement an EMS under TURA in lieu of continuing to develop toxics use reduction plans. Specifically, TURA requires facilities to report to MassDEP “on the progress of the environmental management system according to a schedule and form developed by the Department.” TURA further states that an EMS progress report must include “a certification by a toxics use reduction planner or other environmental management professional with demonstrated qualifications in environmental management systems and toxics use reduction.”

Given the statutory language, facilities must file an EMS Progress Report with MassDEP and have the Report certified by a qualified TUR planner or EMS professional. This report serves a different purpose than a typical third-party EMS audit report in that it will focus on the objectives and targets specific to TURA chemicals and production units, which an EMS audit report may not cover.

MassDEP believes it is important for the EMS Progress Report to be on a standard form to ensure consistency in reporting and to help facilities comply with TURA submittal requirements. The EMS Progress Report will be brief and should require minimal resources to complete. And, facilities that implement an EMS under TURA will benefit from not having to complete a TUR plan update and to file a TUR Plan Summary.

In addition, it is important to note that a facility’s existing EMS auditor could certify the EMS Progress Report, as long as the auditor can demonstrate experience and/or training in toxics use reduction. The regulations allow an EMS professional to qualify to certify an EMS Progress Report by having an initial 16 hours in toxics use reduction training (which could be from past trainings already taken) and obtaining 16 hours of continuing education training in toxics use reduction every six years going forward. An EMS professional also may certify an EMS for his/her own facility by documenting at least two years of professional experience in TUR and then continuing to obtain 16 hours of TUR training every 6 years.

8. Comment: The EMS Progress Report requires reporting on all aspects and impacts, which is overly broad since some facilities could have over a hundred significant aspects. Also, an EMS would not generally require toxics use reduction training for all staff, but only where the training is needed.

Response: MassDEP agrees that the EMS Progress Report should not require reporting on all aspects and impacts and should focus on progress made in reducing toxics subject to TURA and has clarified the Progress Report regulations to this effect. MassDEP also agrees that toxics use training does not need to be provided to all facility staff and has removed that provision, while retaining the overall requirement for environment and compliance training. MassDEP believes

that an effective EMS, by identifying toxics use reduction as a priority in the management policy and identifying covered toxics as significant aspects, should work to bring toxics use reduction training to the appropriate personnel at the facility.